



Bureau of Elections - Legislative Update

January 23, 2013

Governor Snyder signed three election-related bills into law in December 2012. Note that the full text of all new Public Acts can be found at the Michigan Legislature's website at www.michiganlegislature.org. (Click on "bills" in the left margin, select the 2011-2012 session, then type in the bill number.) The final posted versions of House or Senate *concurred* bills will display the bill language in a manner that clearly highlights the law changes; the House or Senate *enrolled* bills will not display changes in this manner.

Pertinent Michigan Election Law changes of interest to Michigan election officials are summarized below. The Bureau of Elections will continue to provide additional implementation details as they are finalized. This notice, as well as prior *Legislative Updates* may be found at the Bureau of Elections website at www.michigan.gov/elections (under "Information for Election Administrators"; "Legislative Updates").

SB 810 (PA 523 of 2012): Multiple Election Law Changes

Effective: March 27, 2013 (90 days after the final adjournment of the 2012 legislative session)

Election Date Changes:

- Eliminates September village elections. All village elections must now occur on the November general election date (even year only). Other September elections have also been eliminated, including city primaries for those that were still using September primary dates. (NOTE: SB 811 was a companion bill to SB 810, which amended the General Law Village Act to eliminate the September village election.)
- Authorizes (but does not require) cities that hold annual or odd-year elections to move to the November general election date, by adoption of a resolution by the City Council. Election date changes take effect after December 31 in the year in which the resolution is adopted.
- Repeals §500f ("In the case of an election for village officers only, the clerk of a township shall transmit to the village clerk of a village that lies partly or completely in the township and that holds its regular election in September under section 642(7) the information necessary to complete the village registration of a person registered under sections 500a to 500j.") In essence, the repeal of this section eliminates the need for township clerks to forward voter registration information to village clerks and eliminates the role of village clerks in administering elections.

IMPLEMENTATION STATUS: The Bureau of Elections will communicate with village clerks to notify them of this change. BOE also asks counties and local jurisdictions to reinforce these points with villages in their areas. Townships with villages should contact their village clerks to obtain any voter registration or absentee ballot-related material, if a duplicate copy is not already maintained by the township.

Photo ID Requirement for In-Person Voter Registration and In-Person AV Ballot Issuance:

- Requires in-person voter registration applicants to provide photo identification. If the voter does not present a photo ID, s/he can sign an affidavit. This requirement affects all sources of in-person voter registration transactions, including those processed by Secretary of State branch offices; county, city and township clerk's offices; and designated voter registration agencies (Department of Community Health, Department of Human Services, Department of Licensing and Regulatory Affairs, and military recruitment centers.)
- Mail-in voter registration applications are **not** subject to the new ID requirement.
- If a voter receives an AV ballot in person at the clerk's office, the voter is required to present a photo ID or sign an affidavit. If the voter signs the affidavit, his/her AV ballot must be prepared as a challenged ballot.
- Requires local jurisdictions and counties to report the number of voters who signed an *Affidavit of Voter not in Possession of Picture Identification*. Local jurisdictions must report these totals to counties within 7 days after the election; counties must report totals to the Secretary of State within 14 days after the election. Once received by the Secretary of State, county-level affidavit reports shall immediately be available for public inspection. (NOTE: Provisional Ballot report forms already include this data element.)

IMPLEMENTATION STATUS: Procedures will mirror those used in the polls – including use of the same list of acceptable forms of identification and the *Affidavit of Voter not in Possession of Picture Identification* form. The Bureau of Elections will revise training and reference materials related to the photo ID requirement, to reference the fact that the photo ID requirement is now also in effect for individuals registering to vote in person, and those receiving an absent voter ballot in person at clerks' offices. BOE will also work with Secretary of State branch offices and other designated voter registration agencies to implement these requirements by the March 27, 2013 effective date. Reminders will be issued prior to the March effective date.

US Citizenship Affirmation on Applications to Vote, AV Applications and AV Ballot Return Envelopes:

- Requires the Application to Vote form (used in the polls) be on a form prescribed by the Secretary of State, and include an *affirmative statement* indicating that the voter is a United States citizen.
- Requires changes and additions to the Absent Voter Ballot Application that include *affirmative statements* (in two places) indicating that the voter is a United States citizen; and an addition to the existing warning language appearing under the signature line, stating that the voter must be a United States citizen to vote, and that a voter will not be issued an absent voter ballot if s/he is not a U.S. citizen.
- Adds language to the **AV return envelope** affirming that the absent voter is a United States citizen.

IMPLEMENTATION STATUS: The Bureau of Elections will finalize and circulate specific form changes to the Application to Vote, AV Ballot Application and AV Ballot Return Envelope later this month. These changes will be communicated to clerks statewide as well as all known print vendors. Revised forms must be in place for use in conjunction with the May 7, 2013 election. NOTE: These changes will not include checkboxes.

Ballot Receipt Extension for Late-Transmitted Military/Overseas Ballots:

- Allows the Secretary of State to extend the ballot receipt deadline for any absent voter ballots for military/overseas voters that are not transmitted by the statutory deadline (45 days prior to the election). The extended ballot receipt deadline will be equal to the number of days after the deadline that the late ballots were transmitted. Late-transmitted ballots that are received on or before the extended receipt deadline will be counted, provided the affected ballots are executed and sent by the voters no later than the close of the polls on election day. The election may be certified before the extended receipt deadline elapses, provided the number of ballots affected will not alter the outcome of the election.
- **NOTE:** The legislative change allowing for extension of the ballot receipt deadline does not relieve local jurisdictions of the State and Federal mandate for transmitting ballots timely. Any jurisdictions that do not issue military/overseas ballots timely are in violation of State and Federal law. Jurisdictions that do not meet these statutory deadlines may be subject to additional legal action by the State and/or Federal government.

IMPLEMENTATION STATUS: The Bureau of Elections will continue to work with county clerks to poll individual jurisdictions prior to each election regarding their compliance with the statutory 45-day deadline for issuing absentee ballots to military/overseas voters. BOE will work directly with counties and any jurisdiction(s) that miss these deadlines to ensure they follow up with affected voters to notify them of the extended ballot receipt deadline and other related requirements. Standard procedures for jurisdictions affected by these requirements will be posted to the BOE web site. Jurisdictions that miss the 45-day deadline will be publicly cited as having missed a legal deadline.

Order of Offices on Ballot:

- Changes the order in which nonpartisan offices appear on the ballot. Offices affected include Community College Board of Trustee Member and Intermediate School District Board Member, which will now precede city officers on the ballot. Metropolitan District Officer has also been added, and will appear after School Board member and before District Library Board Member on the ballot.

IMPLEMENTATION STATUS: The Bureau of Elections will revise and re-issue the *Ballot Production Standards* to incorporate these changes, which will go into effect in conjunction with the May 7, 2013 election. NOTE: Very few jurisdictions will be affected by the addition of the *Metropolitan District Officer* designation. Any jurisdictions that elect Metropolitan District Officers should also be aware of House Bills 4121 and 4122, which subjects these officials to recall. For more specific information on Metropolitan District Officers, contact the Bureau of Elections directly.

Ballot Coaching Poster:

- Requires the Secretary of State to develop a poster for use and display at residential care facilities; these posters must be displayed 45 days prior to each election, up until election day, and will explain the concept of *ballot coaching* and the fact that ballot coaching is prohibited. The intent is to protect our more vulnerable voters from undue influence while they mark their ballots.

IMPLEMENTATION STATUS: The Bureau of Elections will develop the required poster, identify *Residential Care Facilities* subject to this law, and work with them to ensure these materials are posted prior to each election.

HB 6060 and 6063 (PAs 417 and 418 of 2012): Recall Changes Immediate Effect

Two bills were signed into law related to state and local recall processes. Pertinent changes are summarized below.

- Requires that the reason(s) for recall must be “factual”. The factual nature of the reasons for the recall are reviewed and approved along with the “clarity” of the petition.
- Requires that recall petitions targeting state and county officers (except county commissioners) be filed with the Board of State Canvassers (BSC) prior to circulation. The BSC will make the clarity/factual determinations for these offices. Appeal is to the Court of Appeals. Recall petitions targeting all local officials, including county commissioners, will be submitted to the County Election Commission for clarity/factual determinations, with appeal to Circuit Court. The clarity/factual hearing must be held between 10-20 days after the filing of the petition.

Filings and Submission Barred During Certain Time Periods:

- *Petition Submission for Clarity/Factual Hearing:* Recall petitions cannot be submitted to the Board of State Canvassers or Board of County Election Commissioners for clarity/factual hearing purposes during the first and last six months of the official's term of office.
- *Petition Filing:*
 - *Officials Serving Term of Office for Two Years or Less:* Recall petition cannot be filed during the first and last six months of the term of office (MCL 168.951(1), 168.952b)
 - *Officials Serving Term of Office for More than Two Years:* Recall petition shall not be filed during the first and last year of the term of office. (MCL 168.951(1))
 - *Grandfather Clause:* Recall petitions approved for clarity hearing purposes before December 27, 2012 may be filed at any time except the first and last six months of the official's term of office. (MCL 168.951(2)). A factual determination is not necessary for these petitions.
- If a determination of the BSC or Board of County Election Commissioners is appealed, the recall petition is not valid for circulation and shall not be circulated until a determination is made by the Court of Appeals (or Circuit Court for a county-level filing), or until 40 days after the date of the appeal, whichever is sooner.
- Provides that signatures on a recall petition cannot be counted if they are more than 60 days old at the time of filing. (NOTE: this law change significantly shortened this time period from 90 days to 60 days.)
- NOTE: After filing a recall petition and after a recall election, no additional recall petitions may be filed against the same incumbent of that office during the term for which he or she is elected.

Changes to Recall Election Schedule and Candidates for Recall Elections:

There are now three different recall processes in Michigan, each separately covering:

- 1) Local offices (including County Commissioners);
- 2) State and county officers (not including County Commissioners);
- 3) Governor

- *Local-Level Recalls (Handled by Board of County Election Commissioners):*
 - For local-level recalls, HB 6060 essentially changes the concept of a recall election from a two-election process (if the recall was successful) to combining the concepts of a recall election and a special election to fill the possible resulting vacancy. These elections are termed “special recall elections” in the law. That is, there is now a single recall election to fill the partial (remaining) term of office for the official subject to the recall, with the incumbent automatically made a candidate in the election unless he/she withdraws within 10 days after the filing of the recall petition. There is one election and the candidate who receives the highest vote total becomes the elected officeholder.
 - Special recall election dates for local officials are limited to regular May and November election dates.
 - If the recall election involves a partisan office, nominations for the recall election are made by the county political party executive committee specified by law (MCL 168.973a). However, if the incumbent candidate declines to be a candidate at the recall election, the incumbent’s political party also shall nominate a candidate for that office.
 - If the recall election involves a nonpartisan office, candidates seeking election in the recall election must file a nonpartisan nominating petition containing at least 10% of the regularly required number of signatures for the electoral district (MCL 168.544f or 168.303 [school board]) or a \$100 nonrefundable filing fee.
 - The party nominations or nonpartisan petitions must be filed by 4:00 p.m. on the tenth day after the call for the recall election.
 - A candidate without political party affiliation who wishes to seek a partisan office can gain access to the recall election ballot by filing a qualifying petition. The petition must be filed with the appropriate filing official by 4:00 p.m. on the tenth day after the call for the recall election. The petition must contain at least 10% of the number of signatures required under MCL 168.544f.
- *State-Level Recalls (Handled by Board of State Canvassers):*
 - For recalls handled at the State level (state and county officers, except county commissioners), HB 6060 created a “recall primary” and separate “recall general election”.

Recall Primary:

- The officer targeted for recall automatically becomes the party's nominee for the recall general unless he or she withdraws.
- A recall primary is held to determine the nominees of the other major political party. (Minor party candidates are selected by caucus.) The candidate of each political party receiving the greatest number of votes at the recall primary shall be the nominee of the party at the recall general election.
- The recall primary must be held at the next regular election date that is at least 95 days after the filing of the recall petition.

Recall General Election:

- The recall general election shall be held on the next February or August regular election date following the recall primary (whichever occurs first).
- An unsuccessful candidate in a recall primary may not subsequently file a qualifying petition as a candidate without political party affiliation for the recall general election.
- A candidate without political party affiliation may qualify for the recall general election ballot by filing a qualifying petition with the Secretary of State.
- The candidate receiving the highest number of votes in the recall general election is elected for the remainder of the term.

Gubernatorial Recall Election:

- Gubernatorial recalls are handled similarly to the prior recall process for state and local officials.
 - A recall targeting the Governor is limited to the regular February or August election dates.
 - The ballot shall include each reason for recall printed on the recall petition and the Governor's statement justifying his or her conduct in office. Each statement is subject to a limit of 200 words. The question presented on the ballot shall be, "Shall (name) be recalled from the Office of Governor? YES [] NO []."
 - If the Governor is recalled, the Lieutenant Governor assumes the duties of the office.
- Michigan Election Law sections 168.964, 966, 970, 971, 973, and 974 have been repealed in accordance with the changes made to the recall petition and election process.

IMPLEMENTATION ISSUES: The Bureau of Elections has revised *Clerk Accreditation* materials related to recall requirements and procedures, and other related forms and instructions. All revised materials have been posted to the BOE website. Please refer to the Clerk Accreditation manual on the BOE website (www.michigan.gov/elections; *Information for Election Administrators; Election Officials Accreditation Study Guide, Chapter 18: Recalls*); or call BOE directly if you have further questions related to recalls.